

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 RAD REFERRAL 17L-05

6 DATE RECEIVED: February 10, 2017

7 DATE OF NOTIFICATION: February 15, 2017

8 DATE OF LAST RESPONSE: March 30, 2017

9 DATE ACTIVATED: April 25, 2017

10
11 EARLIEST SOL: February 2, 2018

12 LATEST SOL: November 24, 2020

13 ELECTION CYCLE: 2016

14
15 **SOURCE:**

Internally Generated

16
17 **RESPONDENT:**

Comite Pierluisi, Inc. and

18 Hector Del Rio Jimenez, in his official
19 capacity as treasurer¹

20
21 **RELEVANT STATUTES:**

52 U.S.C. § 30116(a)

22 52 U.S.C. § 30116(f)

23 11 C.F.R. § 103.3(b)

24 11 C.F.R. § 110.1

25 11 C.F.R. § 110.2

26 11 C.F.R. § 110.9

27
28 **INTERNAL REPORTS CHECKED:** Disclosure Reports

29
30 **FEDERAL AGENCIES CHECKED:** None

31
32 **I. INTRODUCTION**

33 The Commission's Reports Analysis Division ("RAD") referred Comite Pierluisi, Inc.
34 and Hector Del Rio Jimenez in his official capacity as treasurer ("the Committee") for failing to
35 refund \$13,000 in excessive 2016 primary election contributions and \$75,823.21 in 2016 general

¹ On February 19, 2014, the committee filed an amended Statement of Organization designating Hector Del Rio Jimenez as its treasurer. Comite Pierluisi, Inc., Statement of Organization (Feb. 19, 2014), *available at* <http://docquery.fec.gov/pdf/127/14940512127/14940512127.pdf>.

1 election contributions.² The Committee's response did not challenge the statements in the
2 referral; instead, the Committee requests pre-probable cause conciliation.

3 As discussed below, we recommend that the Commission open a matter under review
4 ("MUR"), find reason to believe that the Committee violated 52 U.S.C. § 30116(f), authorize
5 pre-probable cause conciliation, and approve the attached conciliation agreement.

6 II. FACTS

7 The Committee is the principal campaign committee for Pedro Pierluisi, who was seeking
8 re-election in 2016 for a second four-year term as Puerto Rico's Resident Commissioner, a non-
9 voting member of the U.S. House of Representatives. Pierluisi filed his Statement of Candidacy
10 with the Commission on August 15, 2013.³ Pierluisi, however, declared his candidacy for
11 Governor on November 15, 2015, and was not a candidate for Resident Commissioner in the
12 general election.⁴ The Committee received its last contributions for Pierluisi's re-election as
13 Resident Commissioner on November 24, 2015.⁵

14 As detailed in the Referral, the Committee received \$13,000 in excessive 2016 primary
15 election contributions from three multicandidate committees that it has not refunded.

² RAD referred this matter to OGC in accordance with the *2015-2016 RAD Review and Referral Procedures for Authorized Committees (Standard 5)*. RAD advised that the Committee has no other active or pending referable matters, and has six audit points in the 2015-2016 election cycle.

³ <http://docquery.fec.gov/pdf/620/13941450620/13941450620.pdf>. Puerto Rico's primary election was held on June 5, 2016. http://www.fec.gov/info/charts_primary_dates_2016.shtml.

⁴ See <http://www.rollcall.com/news/home/puerto-rican-delegate-taking-fight-statehood-back-home>. According to the news article, a candidate for Puerto Rico's Governor may not seek re-election to Congress. *Id.*

⁵ <http://docquery.fec.gov/pdf/214/201601319005214214/201601319005214214.pdf>. It does not appear that Pierluisi withdrew his federal candidacy registration.

PRIMARY ELECTION EXCESSIVE CONTRIBUTIONS		
Contributor	Aggregate Contribution	Excessive Amount Not Refunded
Amgen Inc. PAC	\$9,500	\$4,500
Honeywell International PAC	\$11,000	\$6,000
New Democrat Coalition PAC	\$7,500	\$2,500

On December 9, 2015, and September 8, 2016, RAD sent the Committee a Request for Additional Information ("RFAI") regarding the 2015 October Quarterly Report and the 2015 Year-End Report, respectively. The RFAs noted the Committee's receipt of excessive contributions and requested that the Committee take corrective action.

The Committee also received \$75,823.21 in 2016 general election contributions from 32 individuals and 4 multicandidate committees that it has not refunded. The Committee received the contributions between February 2, 2013, and September 24, 2015, and disclosed them in reports beginning with the 2013 April Quarterly Report and ending with the 2015 October Quarterly Report.

On April 24, 2016, RAD sent the Committee a RFAI regarding the 2015 Year-End Report that informed the Committee that it should refund or redesignate any general election contributions it received after Pierluisi withdrew from the general election.⁶ On May 2, 2016, the Committee called RAD to acknowledge receipt of the RFAI, and on May 31, 2016, the Committee filed a Form 99 stating in part:

[W]e will promptly provide the requested information in full compliance with all applicable laws and regulations. Moreover, should any corrective action be required, any such action will be taken immediately, and any and all information related thereto will be provided to the Federal Election Commission in a timely manner.

⁶ <http://docquery.fec.gov/pdf/191/201604240300042191/201604240300042191.pdf>.

1 On July 7, 2016, the Committee filed another Form 99 stating, in part:

2 This letter is to inform you (A) that we are in the process of
3 exploring all possible means, and take all necessary steps, to
4 comply with applicable laws and regulations, (B) that any and all
5 information related thereto will be provided to the Federal Election
6 Commission in a timely manner and (C) that we will not attempt to
7 terminate the Committee until all such matters have been properly
8 resolved.⁷
9

10 On July 19, 2016, the Committee filed several amendments to its reports to disclose
11 redesignations of general election contributions to the primary election.⁸

12 RAD spoke with Committee representatives many times between April and September
13 2016 about the excessive primary and unrefunded general election contributions. The
14 Committee explained that it had tried to raise money to make refunds, but it could not, nor could
15 Pierluisi loan the Committee money to make refunds. The Committee stated that it would
16 continue to disclose the delinquent refunds as debts and asked to resolve the refund issues
17 outside of the administrative enforcement process. RAD informed the Committee that since it
18 had not refunded or remedied the contributions, the matter would be referred to another
19 Commission office. The Commission notified Respondents of the Referral.

20 The Committee does not contest the allegations in the Referral, but it does request pre-
21 probable cause conciliation.⁹

⁷ See Miscellaneous Report to FEC (July 7, 2016), *available at*
<http://docquery.fec.gov/pdf/274/201607140300083274/201607140300083274.pdf>.

⁸ The Committee also previously filed amendments to several of the reports that did not materially affect the general election contributions at issue.

⁹ Resp. at 1.

III. LEGAL ANALYSIS

During the 2016 election cycle, an authorized committee was limited to accepting a total of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.¹⁰ A primary election and a general election are each considered a separate "election," and the individual contribution limits are applied separately with respect to each election.¹¹ Candidates and political committees are prohibited from knowingly accepting excessive contributions.¹²

The Commission's regulations permit a candidate or his authorized committee to receive contributions for the general election prior to the primary election.¹³ If, however, the candidate does not become a candidate in the general election, the committee must: (1) refund the contributions designated for the general election; (2) redesignate such contributions in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with 11 C.F.R. § 110.1(k)(3).¹⁴ The committee must do so within 60 days of the date that the committee has actual notice of the need to redesignate, reattribute, or refund the

¹⁰ 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A); 11 CFR §§ 110.1(a)-(b), 110.2(b)(1).

¹¹ 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

¹² 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

¹³ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

¹⁴ See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

1 contributions, such as the date the candidate loses the primary or withdraws from the
2 campaign.¹⁵

3 In this matter, the Committee accepted \$13,000 in excessive primary election
4 contributions and failed to refund \$75,823.21 in general election contributions after Pierluisi was
5 no longer a candidate for Resident Commissioner in the general election. The Committee does
6 not dispute its failure to make the appropriate refunds and requests pre-probable cause
7 conciliation.

8 Based on the foregoing, we recommend that the Commission find reason to believe that
9 Comite Pierluisi, Inc. and Hector Del Rio Jimenez in his official capacity as treasurer violated
10 52 U.S.C. § 30116(f).

11
12
13
14
15
16
17

¹⁵ Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo). The Commissions' regulations include procedures for reattributing or redesignating a contribution. *See generally* 11 CFR § 110.1(b), (k). For example, a joint contribution may be attributed equally to each person on the negotiable instrument, and a portion of a joint contribution may be reattributed to another person on the negotiable instrument to avoid being excessive. 11 C.F.R. § 110.1(k)(2), (3). Similarly, a contribution may be designated to a particular election, but it may be redesignated to another election to avoid being excessive. 11 C.F.R. § 110.1(b)(2), (3), (5). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. 11 C.F.R. §§ 110.1(b)(5), 110.1(k)(3).

1

2

3

4

5

6

7

8

V. RECOMMENDATIONS

9

10

1. Open a MUR.

11

12

2. Find reason to believe that Comite Pierluisi, Inc. and Hector Del Rio Jimenez in his official capacity as treasurer violated 52 U.S.C. § 30116(f).

13

14

15

3. Approve the attached Factual and Legal Analysis.

16

17

4. Enter into conciliation with Comite Pierluisi, Inc. and Hector Del Rio Jimenez in his official capacity as treasurer prior to a finding of probable cause to believe.

18

19

20

5. Approve the attached conciliation agreement.

21

22

6. Approve the appropriate letter.

23

24

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel
for Enforcement

BY:

Stephen Gura
Stephen Gura
Deputy Associate General Counsel

6.23.17
Date

Mark D. Shonkwiler by SG
Mark Shonkwiler
Assistant General Counsel

Kamau Philbert
Kamau Philbert
Staff Attorney

Attachments:

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5
6 **RESPONDENTS:** Comite Pierluisi, Inc.
7 and Hector Del Rio Jimenez
8 in his official capacity as treasurer
9

MUR _____

10 **I. INTRODUCTION**

11 The Commission's Reports Analysis Division ("RAD") referred Comite Pierluisi, Inc.
12 and Hector Del Rio Jimenez in his official capacity as treasurer ("the Committee") for failing to
13 refund \$13,000 in excessive 2016 primary election contributions and \$75,823.21 in 2016 general
14 election contributions. The Committee's response did not challenge the statements in the
15 referral.

16 As discussed below, the Commission finds reason to believe that the Committee violated
17 52 U.S.C. § 30116(f).

18 **II. FACTS**

19 The Committee is the principal campaign committee for Pedro Pierluisi, who was seeking
20 re-election in 2016 for a second four-year term as Puerto Rico's Resident Commissioner, a non-
21 voting member of the U.S. House of Representatives. Pierluisi filed his Statement of Candidacy
22 with the Commission on August 15, 2013.¹ Pierluisi, however, declared his candidacy for
23 Governor on November 15, 2015, and was not a candidate for Resident Commissioner in the
24 general election.² The Committee received its last contributions for Pierluisi's re-election as

¹ <http://docquery.fec.gov/pdf/620/13941450620/13941450620.pdf>. Puerto Rico's primary election was scheduled for June 5, 2016. http://www.fec.gov/info/charts_primary_dates_2016.shtml.

² See <http://www.rollicall.com/news/home/puerto-rican-delegate-taking-fight-statehood-back-home>. According to the news article, a candidate for Puerto Rico's Governor may not seek re-election to Congress. *Id.*

1 Resident Commissioner on November 24, 2015.³

2 As detailed in the Referral, the Committee received \$13,000 in excessive 2016 primary
3 election contributions from three multicandidate committees that it has not refunded.

PRIMARY ELECTION EXCESSIVE CONTRIBUTIONS		
Contributor	Aggregate Contribution	Excessive Amount Not Refunded
Amgen Inc. PAC	\$9,500	\$4,500
Honeywell International PAC	\$11,000	\$6,000
New Democrat Coalition PAC	\$7,500	\$2,500

4
5 On December 9, 2015, and September 8, 2016, RAD sent the Committee Requests for
6 Additional Information ("RFAs") regarding the 2015 October Quarterly Report, and it sent
7 another RFAI on September 8, 2016, regarding the 2015 Year-End Report. The RFAs noted the
8 Committee's receipt of excessive contributions and requested that the Committee take corrective
9 action.

10 The Committee also received \$75,823.21 in 2016 general election contributions from
11 32 individuals and 4 multicandidate committees that it has not refunded. The Committee
12 received the contributions between February 2, 2013, and September 24, 2015, and disclosed
13 them in reports beginning with the 2013 April Quarterly Report and ending with the 2015
14 October Quarterly Report.

15 On April 24, 2016, RAD sent the Committee a RFAI regarding the 2015 Year-End
16 Report that informed the Committee that it should refund or redesignate any general election

³ <http://docquery.fec.gov/pdf/214/201601319005214214/201601319005214214.pdf>. It does not appear that Pierluisi withdrew his federal candidacy registration.

1 contributions it received after Pierluisi was no longer a candidate in the general election.⁴ On
2 May 2, 2016, the Committee called RAD to acknowledge receipt of the RFAI, and on May 31,
3 2016, the Committee filed a Form 99 stating, in part:

4 [W]e will promptly provide the requested information in full compliance
5 with all applicable laws and regulations. Moreover, should any corrective
6 action be required, any such action will be taken immediately, and any and
7 all information related thereto will be provided to the Federal Election
8 Commission in a timely manner.
9

10 On July 7, 2016, the Committee filed another Form 99 stating, in part:

11 This letter is to inform you (A) that we are in the process of
12 exploring all possible means, and take all necessary steps, to
13 comply with applicable laws and regulations, (B) that any and all
14 information related thereto will be provided to the Federal Election
15 Commission in a timely manner and (C) that we will not attempt to
16 terminate the Committee until all such matters have been properly
17 resolved.⁵
18

19 On July 19, 2016, the Committee filed several amendments to its reports to disclose
20 redesignations of general election contributions to the primary election.⁶

21 RAD spoke with Committee representatives many times between April and September
22 2016 about the excessive primary and unrefunded general election contributions. The
23 Committee explained that it had tried to raise money to make refunds, but it could not, nor could
24 Pierluisi loan the Committee money to make refunds. The Committee stated that it would
25 continue to disclose the delinquent refunds as debts and asked to resolve the refund issues

⁴ <http://docquery.fec.gov/pdf/191/201604240300042191/201604240300042191.pdf>.

⁵ See Miscellaneous Report to FEC (July 7, 2016), *available at*
<http://docquery.fec.gov/pdf/274/201607140300083274/201607140300083274.pdf>.

⁶ The Committee also previously filed amendments to several of the reports that did not materially affect the general election contributions at issue.

1 outside of the administrative enforcement process. RAD informed the Committee that since it
2 had not refunded or remedied the contributions, the matter would be referred to another
3 Commission office. The Commission notified Respondents of the Referral. The Committee
4 does not contest the allegations in the Referral.⁷

5 III. LEGAL ANALYSIS

6 During the 2016 election cycle, an authorized committee was limited to accepting a total
7 of \$2,700 per election from any individual and \$5,000 from a multicandidate committee.⁸ A
8 primary election and a general election are each considered a separate "election," and the
9 individual contribution limits are applied separately with respect to each election.⁹ Candidates
10 and political committees are prohibited from knowingly accepting excessive contributions.¹⁰

11 The Commission's regulations permit a candidate or his authorized committee to receive
12 contributions for the general election prior to the primary election.¹¹ If, however, the candidate
13 does not become a candidate in the general election, the committee must: (1) refund the
14 contributions designated for the general election; (2) redesignate such contributions in
15 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in
16 accordance with 11 C.F.R. § 110.1(k)(3).¹² The committee must do so within 60 days of the date

⁷ Resp. at 1.

⁸ 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A); 11 CFR §§ 110.1(a)-(b), 110.2(b)(1).

⁹ 52 U.S.C. §§ 30101(l)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1, 110.2.

¹⁰ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

¹¹ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

¹² See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive

1 that the committee has actual notice of the need to redesignate, reattribute, or refund the
2 contributions, such as the date the candidate loses the primary or withdraws from the
3 campaign.¹³

4 In this matter, the Committee accepted \$13,000 in excessive primary election
5 contributions and failed to refund \$75,823.21 in general election contributions after Pierluisi was
6 no longer a candidate in the general election. The Committee does not dispute its failure to make
7 the appropriate refunds.

8 Based on the foregoing, the Commission finds reason to believe that Comite Pierluisi,
9 Inc. and Hector Del Rio Jimenez in his official capacity as treasurer violated 52 U.S.C.
10 § 30116(f).

contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible.”); Advisory Op. 2007-03 (Obama for America) at 3 (“If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA’s contribution limits.”).

¹³ Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15.(Russo). The Commissions’ regulations include procedures for reattributing or redesignating a contribution. *See generally* 11 CFR § 110.1(b), (k). For example, a joint contribution may be attributed equally to each person on the negotiable instrument, and a portion of a joint contribution may be reattributed to another person on the negotiable instrument to avoid being excessive. 11 C.F.R. § 110.1(k)(2), (3). Similarly, a contribution may be designated to a particular election, but it may be redesignated to another election to avoid being excessive. 11 C.F.R. § 110.1(b)(2), (3), (5). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. 11 C.F.R. §§ 110.1(b)(5), 110.1(k)(3).